



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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WINSTON & STRAWN LLP
PATENT DEPARTMENT
1700 K STREET, N.W.
WASHINGTON, DC 20006

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SEP 29 2008

In re Application of :
Mervyn John ROSE, et al :
Application No. 10/773,696 : DECISION ON PETITION
Filed: February 6, 2004 :
Attorney Docket No. 85170-5100 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed May 7, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, October 2, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks items (1) and (3) above.

Turning first to item (3) above, the statement of unintentional delay is not considered at this time to be a properly submitted statement. In this regard, the petition containing the statement of unintentional delay is signed by James Houston. It is further noted that, in a paper filed with the petition, Mr. Houston is stated to be the Director of Research and Innovation Services. Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition containing the statement of unintentional delay is not signed by all the inventors and the record herein fails to disclose that petitioner herein (James Houston) was ever given a power of attorney to act on behalf of the other inventors, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay. As it appears that Mr. Houston is signing on behalf of an assignee, compliance with 37 CFR 3.73(b) must be satisfied. In this regard, 37 CFR 3.73(b) provides:

- (1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:
 - (i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment * * * For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or
 - (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

- (i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
- (ii) Being signed by a person having apparent authority to sign on behalf of the assignee, *e.g.*, an officer of the assignee.

(c) For patent matters only:

- (1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.
- (2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

In view of the above, and as it appears that Mr. Houston is signing the statement of unintentional delay as an assignee, then compliance with 37 CFR 3.73(b) must be satisfied. A blank certificate under 37 CFR 3.73(b) is enclosed with this decision for petitioner's convenience.

As to item (1) above, the reply is considered defective also for the reasons stated above (that the paper (reply) must be signed by a proper party; *i.e.*, all the inventors or an assignee of the entire interest and, if signed by an assignee of the entire interest, must satisfy the provisions of 37 CFR 3.73(b)).

In sum, petitioner must submit a petition containing a statement of unintentional delay and reply (amendment) signed by all the inventors, **unless** petitioner herein is the assignee of the entire right, title and interest in the instant application, then compliance with 37 CFR 3.73(b) must be satisfied, which can be accomplished by completion of the enclosed certificate under 37 CFR 3.73(b).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By mail: **Mail Stop PETITIONS**

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-6735.



Thurman Page
Petitions Examiner
Office of Petitions

Enclosure: Certificate under 37 CFR 3.73(b) and Privacy Act Statement

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: _____

Application No./Patent No.: _____ Filed/Issue Date: _____

Entitled: _____

(Name of Assignee) _____, a _____ (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. the assignee of the entire right, title, and interest; or
2. an assignee of less than the entire right, title and interest
(The extent (by percentage) of its ownership interest is _____ %)

in the patent application/patent identified above by virtue of either:

A. An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

 Additional documents in the chain of title are listed on a supplemental sheet. As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature_____
Date_____
Printed or Typed Name_____
Telephone Number_____
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Fee History Query

Revenue Accounting and Management

Name/Number: 10773696

Total Records Found: 13

Start Date: Any Date

End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
05/08/2008	00004160	4	<u>1453</u>	\$1,540.00	05/07/2008	DA 501814
08/03/2007	00006822	4	<u>1801</u>	\$790.00	08/03/2007	DA 501814
07/02/2007	00001625	4	<u>2253</u>	\$510.00	06/29/2007	DA 501814
07/02/2007	00001626	4	<u>2401</u>	\$250.00	06/29/2007	DA 501814
05/05/2006	00000081	1	<u>1253</u>	\$1,020.00	05/01/2006	DA 501814
05/05/2006	00000141	1	<u>1806</u>	\$180.00	05/01/2006	DA 501814
08/03/2005	00000011	1	<u>1253</u>	\$1,020.00	07/28/2005	DA 501814
08/03/2005	00000012	1	<u>1806</u>	\$180.00	07/28/2005	DA 501814
06/04/2004	00000245	1	<u>1051</u>	\$130.00	06/01/2004	DA 501814
06/03/2004	00000280		<u>8021</u>	\$40.00	06/03/2004	DA 501814
02/12/2004	00000071	1	<u>1001</u>	\$770.00	02/06/2004	DA 501814
02/12/2004	00000072	1	<u>1202</u>	\$324.00	02/06/2004	DA 501814
02/12/2004	00000073	1	<u>1201</u>	\$344.00	02/06/2004	DA 501814

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mervyn John ROSE et al. Confirmation No.: 7787
Application No.: 10/773,696 Group Art Unit: 2813
Filing Date: February 6, 2004 Examiner: Laura M. Schillinger
For: FIELD EMISSION BACKPLATE Attorney Docket No.: 85170-5100

**PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I am an official of THE UNIVERSITY COURT OF THE UNIVERSITY OF DUNDEE, Nethergate, Perth Road, Dundee DD1 4HN, Great Britain, the Assignee of the entire interest in and to the above-identified application by virtue of an assignment which was recorded on June 1, 2004 at Reel 014681, Frame 0227. This petition is made on behalf of and for the 5 benefit of the Assignee.

The above-identified application became abandoned for failure to respond to the office action dated October 3, 2007. Such abandonment was unintentional.

10 The Assignee hereby petitions for revival of this application and encloses in support thereof a full response to the office action. The Assignee further confirms that the entire delay in filing of the required reply from the due date up to the filing of a grantable petition for revival under 37 CFR 1.137(b) was unintentional.

Respectfully submitted,

Date: 22-14-08

By: _____
Position: _____
James Houston
Director
Research & Innovation Services

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mervyn John ROSE et al. Confirmation No.: 7787
Application No.: 10/773,696 Group Art Unit: 2813
Filing Date: February 6, 2004 Examiner: Laura M. Schillinger
For: FIELD EMISSION BACKPLATE Attorney Docket No.: 85170-5100

FEE FOR PETITION FOR REVIVAL

MAIL STOP DAC
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The fee for the filing of the concurrently filed Petition for Revival is estimated to be \$1,540.00. Please charge this and any other fees for processing this application to Winston & Strawn LLP's Deposit Account No. 50-1814.

Respectfully submitted,

Date: 5-7-08


Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP
CUSTOMER NO. 28765
(212) 294-3311

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mervin John ROSE et al. Confirmation No.: 7787
Application No.: 10/773,696 Group Art Unit: 2813
Filing Date: February 6, 2004 Examiner: Laura M. Schilling
For: FIELD EMISSION BACKPLATE Attorney Docket No.: 85170-5100

Submission Of
Petition For Revival Of An Application For Patent Abandoned
Unintentionally Under 37 CFR 1.137(b) And Amendment

Mail Stop: DAC
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Notice of Abandonment dated April 21, 2008 and Office Action dated October 2, 2007, Applicants respectfully submit herewith following documents into the record of this above-identified application.

1. Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b);
2. Fee For Petition For Revival; and
3. Amendment.

Please charge all required fees to Winston & Strawn LLP Deposit Account No. 50-1814.

Respectfully submitted,

Date: 5-7-08



Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP
CUSTOMER NO. 28765
(212) 294-3311